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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/628,398	08/01/2000	David A. Selby	RSW9-2000-0080-US1	5649

7590

08/05/2003

Mark D Simpson Esquire  
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2600 Aramark Tower 1101 Market Street  
Philadelphia, PA 19107-2950

EXAMINER

BLECK, CAROLYN M

ART UNIT

PAPER NUMBER

3626

DATE MAILED: 08/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/628,398

Applicant(s)

SELBY, DAVID A.

Examiner

Carolyn M Bleck

Art Unit

3626

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 06 June 2003.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 1-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-26 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

## Priority under 35 U.S.C. §§ 119 and 120

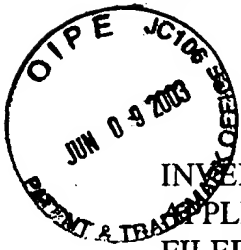
- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

## Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 6.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other:

#6/IDS 3626  
Lownan  
Docket No. RSW920000080US1  
6-9-03

PATENT



IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

INVENTORS: David A. Selby  
APPLICATION NO. 09/628,398  
FILED: August 1, 2000  
CASE NO. RSW920000080US1

Examiner: C. Bleck  
Group Art Unit: 3626

TITLE: METHOD AND SYSTEM FOR PREDICTION OF  
MATERIALIZATION OF A GROUP RESERVATION

CERTIFICATE OF MAILING

I hereby certify that this correspondence, along with any paper indicated as being enclosed, are being deposited with the United States Postal Service as first-class mail, postage prepaid, in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450, on June 5, 2003.

June 5, 2003  
Date

Lynn M. White  
Lynn M. White

Commissioner of Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

RECEIVED  
JUN 11 2003  
GROUP 3600

SUPPLEMENTAL DISCLOSURE UNDER 37 CFR §1.56

Sir:

Pursuant to applicant's duty of disclosure under 37 C.F.R. § 1.56, applicant brings to the Examiner's attention the following related patent applications currently being prosecuted by the undersigned in the U.S. Patent and Trademark Office:

CB

U.S. Application No. 09/628,400, Filed August 1, 2000  
Inventor: David A. Selby  
"Method and System for Prediction of Materialization of a Reserved Purchase"  
Examiner Janet D. Chance, Art Unit 3626

Attachment to paper # 7

CB

U.S. Application No. 09/628,399, filed August 1, 2000

Inventor: David A. Selby

"Method and System for Management of a Wait List for Reserved Purchases"

Examiner Thomas A. Dixon, Art Unit 3629

These applications contain similar subject matter with patentably distinct claims. However, since they are being examined by a different Examiner than is the present application, and since the Examiner herein may consider these applications material to patentability, applicant brings them to the attention of the Examiner.

Respectfully submitted,



Mark D. Simpson

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considered 7/28/03 

## **DETAILED ACTION**

### ***Notice to Applicant***

1. This communication is in response to the amendment filed 6 June 2003. Claims 1-26 are pending. The IDS statement filed 9 June 2003 has been entered and considered.

### ***Specification***

2. The objection to the abstract is hereby withdrawn due to the amendment filed 6 June 2003.

### ***Claim Rejections - 35 USC § 101***

3. The rejection of claims 1-26 under 35 USC § 101 is hereby withdrawn due to the amendment filed 6 June 2003.

### ***Claim Rejections - 35 USC § 103***

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 1-2 and 14-15 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung (4,775,936), for substantially the same reasons given in the previous Office Action (see paper number 3).

(A) Claim 1 has been amended to now recite the limitations of “using a processing device.” As per this feature, Jung discloses a computer including a processing means (col. 3 lines 18-27) for performing the operations of the method disclosed in the previous Office Action (see paper number 3). The remainder of claim 1 regarding the steps of the method has not been amended, and is therefore rejected under the same rationale given in the prior Office Action (paper number 3), and incorporated herein.

(B) Claims 2 and 15 have not been amended. As such, claims 2 and 15 are rejected for the same reasons given in the previous Office Action (paper number 3), and incorporated herein.

(C) Claim 14 has been amended to recite the feature of “embodied on a computer readable media”. As per this feature, Jung discloses a disk drive in a computer (col. 3 lines 18-27). The remainder of claim 14 regarding the steps of the method has not been amended, and is therefore rejected under the same rationale given in the prior Office Action (paper number 3), and incorporated herein.

6. Claims 3-13 and 16-26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jung (4,775,936) as applied to claims 1 and 14 above, and further in view of Bowen et al. (5,648,900), for substantially the same reasons given in the previous Office Action (see paper number 3).

(A) Claims 3-13 and 16-26 have not been amended, and therefore those claims are rejected under the same rationale and for the same reasons given in the previous Office Action (see paper number 3), and incorporated herein.

### ***Response to Arguments***

7. Applicant's arguments filed 6 June 2003 have been fully considered but they are not persuasive. Applicant's arguments will be addressed hereinbelow in the order in which they appear in the response filed 6 June 2003.

(A) At pages 10-15 of the 6 June 2003 response, Applicant argues that the applied references fail to teach the features of gathering and analysis of reservation information relating to group reservations.

In response, the Examiner respectfully notes that the cited references were never applied as references under 35 U.S.C. 102 against the pending claims. As such, the Examiner respectfully submits that the issue at hand is not whether the applied prior art specifically teaches the claimed features, *per se*, but rather, whether or not the prior art, when taken in combination with the knowledge of average skill in the art, would put the

artisan in possession of these features. Regarding this issue, it is well established that references are evaluated by what they suggest to one versed in the art, rather than by their specific disclosures, *In re Bozek*, 163 USPQ 545 (CCPA 1969). The issue of obviousness is not determined by what the references expressly state but by what they would reasonably suggest to one of ordinary skill in the art, as supported by decisions in *In re DeLisle* 406 Fed 1326, 160 USPQ 806; *In re Kell, Terry and Davies* 208 USPQ 871; and *In re Fine*, 837 F.2d 1071, 1074, 5 USPQ 2d 1596, 1598 (Fed. Cir. 1988) (citing *In re Lalu*, 747 F.2d 703, 705, 223 USPQ 1257, 1258 (Fed. Cir. 1988)). Further, it was determined in *In re Lamberti et al*, 192 USPQ 278 (CCPA) that:

- (i) obviousness does not require absolute predictability;
- (ii) non-preferred embodiments of prior art must also be considered; and
- (iii) the question is not express teaching of references, but what they would suggest.

According to *In re Jacoby*, 135 USPQ 317 (CCPA 1962), the skilled artisan is presumed to know something more about the art than only what is disclosed in the applied references. In *In re Bode*, 193 USPQ 12 (CCPA 1977), every reference relies to some extent on knowledge of persons skilled in the art to complement that which is disclosed therein.

According to *Ex parte Berins*, 168 USPQ 374 (Bd. Appeals), there is no statutory limitation as to the number of references that may be used to demonstrate obviousness...not what references expressly state but what they would reasonably suggest to one of ordinary skill in the art. In *In re Conrad*, 169 USPQ 170 (CCPA),



obviousness is not based on express suggestion, but what references taken collectively would suggest.

In reference to Applicant's specific arguments that the applied references fail to teach the features of gathering and analysis of reservation information relating to group reservations, the Examiner respectfully submits that Applicant's statements appear to be misdescriptive of the full teachings of Jung. In the previous Office Action (see paper number 3), it is noted that the Examiner clearly recited the teachings of Jung's method including obtaining through an information receiving means and storing for later use, historical traffic flow information including the number of groups booked on a vehicle and the number of groups actually transported on a vehicle (col. 1 line 65 to col. 2 line 27 and col. 3 lines 27-53), determining an optimal booking level using an overbooking program calculated by taking the average of three other booking levels, wherein the booking levels include a demand-based booking level which is based on average "no show" factors, an oversale-based booking level which is based on average booking statistics and a standard deviation value which takes predictability into account, and a prediction-based booking level which predicts the optimal booking level for the next flight by averaging the demand-based and oversale-based booking levels (col. 2 lines 28-52 and col. 7 lines 14-30), and displaying the recommended booking level in an overbooking report (col. 8 lines 36-40). It is unclear to the Examiner how Jung's disclosure of historical traffic flow information including the number of groups booked on a vehicle and the number of groups actually transported on a vehicle (col. 1 line 65 to col. 2 line 27 and col. 3 lines 27-53), and further Jung's disclosure of a main database

storing information relating to the capacity of each passenger plane in a fleet, the number of standby passengers actually transported on each airplane, the number of standby passengers that desired to be transported on each airplane but could not be boarded, the number of passengers in groups actually transported on each airplane, the total number of passengers for each airplane, etc. (see col. 3 lines 28-50) is not "reservation information." It is respectfully submitted that tracking the number of passengers in a vehicle such as an airplane is a form of "reservation information" (col. 4 lines 28-35). Therefore, it is the position of the Examiner that Jung clearly discloses the Applicant's features of gathering and analyzing reservation information relating to group reservations, and insofar as claims 1 and 14 do not provide the details of the "reservation information", it is respectfully submitted that the disclosure of Jung, is commensurate with the breadth of claims 1 and 14, and is sufficient to address the features as claimed, when considered collectively with the knowledge of average skill in the art.

In addition, Applicant argues that "reservation information" is clearly defined in the specification as including commodity details, demographic information, and/or POS information relating to past or current reservations for perishable commodities. However, the Examiner was unable to find any passage, nor does Applicant point to any specific portion of the specification, that would lead one to such a definition. Furthermore, upon reviewing the specification, the Examiner found at pages 9-12, 15-16, 18-19, and 21 references to apparent "reservation information". However, these references do not provide a positive definition of the claimed "reservation information."

Instead, the passages use non-committal language that is only illustrative of the types of information which “may” be included (see POS information, pg. 10), the types of information included “without limitation” (see Demographic information, pg. 10), or information that provides an “example” (see Commodity Details, pg. 10) that is included in the claimed “reservation information” in various embodiments. Such descriptions fail to define the required features of “reservation information.” As such, the Examiner has given the claim language the broadest interpretation and has applied art accordingly.

Further, according to MPEP §2111, during patent examination, claims are given their broadest reasonable interpretation consistent with the specification. It is proper to use the specification to interpret what the applicant meant by word or phrase recited in the claim. However, it is not proper to read limitations appearing in the specification into the claim when these limitations are not recited in the claim. See *In re Paulsen*, 30 F.3d 1475, 1480, 31USPQ2d 1671, 1674 (Fed. Cir. 1994); *Intervet America Inc. v. Kee-Vet Lab. Inc.*, 887 F.2d 1050, 1053, 12USPQ2d 1474, 1476 (Fed. Cir. 1989). Words of the claim are generally given their ordinary and customary meaning, unless it appears from the written description that they were used differently by the Applicant. Where an Applicant chooses to be his or her own lexicographer and defines terms with special meanings, he or she must set out the special definition explicitly and with “reasonable clarity, deliberateness, and precision” in the disclosure to give one of ordinary skill in the art notice of the change. See *Telexflex Inc. v. Ficosa North America Corp.*, 299 F.3d 1313, 1325, 63 USPQ2d 1374, 1381 (Fed. Cir. 2002), *Rexnord Corp. v. Laitram Corp.*, 274 F.3d 1336, 1342, 60 USPQ2d 1851, 1854 (Fed. Cir. 2001), and MPEP §2111.01.

Pursuant to 35 U.S.C. § 112, 2<sup>nd</sup> paragraph “[I]t is applicant’s burden to precisely define the invention, and not the [examiner’s].” *In re Morris*, 127 F.3d 1048, 1056, 44 USPQ2d 1023, 1029 (Fed. Cir. 1997). Therefore, it would not be proper for the Examiner to give words of the claim special meaning when no such special meaning has been defined by the Applicant in the written description. In addition, it is noted that where a definition set forth in the written description is merely exemplary (where Applicant uses the phrase “for example”) the Examiner should not consider this a special definition.

In response to applicant's argument that the references fail to show certain features of applicant's invention, it is noted that the features upon which applicant relies (i.e., at page 13 of the 6 June 2003 response, “reservation information that is gathered and analyzed relating to why a particular person made a reservation and/or group reservation and kept or dismissed the reservation”) are not recited in the rejected claim(s). Although the claims are interpreted in light of the specification, limitations from the specification are not read into the claims. See *In re Van Geuns*, 988 F.2d 1181, 26 USPQ2d 1057 (Fed. Cir. 1993).

(B) At pages 14-15 of the 6 June 2003 response, Applicant argues that Bowen fails to disclose gathering and analyzing “reservation information”.

In response, the Examiner respectfully submits that one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). In particular,

the teachings that Applicant argues are missing from the Bowen reference are clearly disclosed in the respective teachings of Jung with regards to gathering and analyzing reservation information, as discussed in detail within a prior Office Action (paper number 3), and incorporated herein. Bowen was specifically relied upon for teaching specific types of reservation information. Note Bowen's teachings of controlling and monitoring of group travel related services including storing in a storage unit information related to a historical and current group control record comprising information such as the name and ID of the owner and organizer of group travel, the group name, the wholesaler's address, the phone number of the owner, the inventory items obtained from a master inventory, the date contained on the inventory item on which unused inventory must be returned to a provider, an airline record locator, departure and arrival cities, the dates of travel (col. 3 lines 25 to col. 4 line 63, col. 8 lines 18-30, col. 10 lines 32-60, col. 11 line 63 to col. 12 line 22, col. 14 line 16 to col. 17 line 25, and col. 20 lines 3-40). Thus, the artisan viewing Jung and Bowen collectively as a method, would have understood that Jung was relied upon primarily for teaching gathering and analyzing reservation information, and Bowen was relied upon for teaching the types of reservation information, in light of Jung's teachings.

### ***Conclusion***

8. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn Bleck whose telephone number is (703) 305-3981. The Examiner can normally be reached on Monday-Thursday, 8:00am – 5:30pm, and from 8:30am – 5:00pm on alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Joseph Thomas can be reached at (703) 305-9588.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Receptionist whose telephone number is (703) 306-1113.

10. **Any response to this action should be mailed to:**

Commissioner of Patents and Trademarks  
Washington, D.C. 20231

**Or faxed to:**

(703) 305-7687	[Official communications; including After Final communications labeled "Box AF"]
(703) 746-8374	[Informal/ Draft communications, labeled "PROPOSED" or "DRAFT"]

Hand-delivered responses should be brought to Crystal Park 5, 2451 Crystal Drive, Arlington, VA, 7th Floor (Receptionist).

*CB*

CB

July 28, 2003

*Joseph Thomas*  
JOSEPH THOMAS  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3600